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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Internally displaced persons

Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57

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Introduction

1. It will be recalled that the Commission on Human Rights, in resolution 1995/57 adopted at its fifty-first session, decided to extend for a further three-year period the mandate of the Representative of the Secretary-General on internally displaced persons. The General Assembly, in resolution 50/195, adopted on 22 December 1995, commended the Representative for the catalytic role he is playing to raise the level of consciousness about the plight of the internally displaced. It noted his efforts to develop a legal framework and strategies for the better protection, assistance and the development of the displaced, in particular his analysis of the causes of internal displacement, and the measures of prevention, protection, assistance and solutions. It called on the Representative to finalize his compilation and analysis of existing legal norms for inclusion in the present report and invited the Commission to consider the question of establishing a framework on that basis. It also called for increased dialogue with Governments, intergovernmental and non-governmental organizations as well as regional organizations.

2. In his reports to the Commission at its fifty-first session (E/CN.4/1995/50 and Add.1-4), and to the General Assembly at its fiftieth session (A/50/558), as well as in his several reports to the Secretary-General, the Representative reviewed his missions to 10 countries and the follow-up to those missions, discussed in detail the issue of legal standards, analysed relevant institutional mechanisms and capacities and examined strategies being developed to provide better assistance and protection. He also outlined the fundamentals for a plan of action to address the protection, assistance and development needs of the internally displaced. The present report provides an overview of the manner in which his mandate has evolved over the past several years. Emphasis is placed on the lessons learned, how they have influenced programmes of action, and their implications for the future activities of the mandate.

I. THE CONTEXT OF DISPLACEMENT

3. Internal displacement can result from a wide variety of factors, both natural and man-made. In all cases the needs of the affected population are great and usually the response to them is grossly inadequate. However, in certain situations of internal displacement the response of the Government tends to be more supportive than in others. Natural disasters, for instance, or even inter-State armed conflict, elicit sympathetic and positive approaches towards the victims.

4. On the contrary, in situations of internal armed conflict, communal violence or systematic violations of human rights, the response to displacement is invariably complicated by the cleavages involved. These cleavages often take the form of an identity crisis, whether based on race, ethnicity, religion, culture or class. In most of the countries the Representative has visited this was the case. The majority of the internally displaced were associated with the "enemy", whether the "enemy" consisted of an identifiable insurgent group or, more generally, an ethnic, cultural or social group perceived as inferior, "threatening", or simply "other". In other cases again, there would be differences in the treatment afforded to the

various categories of displaced persons, depending on whether they belonged to the "right side". The result in all cases was that the internally displaced fell into a vacuum, which affected the discharge of the legal or moral responsibility entrusted to the authorities. Nevertheless, there were different degrees of government response and in most cases there was some level of commitment to the internally displaced, manifested by the provision of a certain amount of relief aid, grossly inadequate though it nearly always was.

II. LEGAL STANDARDS

5. The extent to which internally displaced persons are covered by international human rights and humanitarian law has been a subject of study by the mandate. It will be recalled that when the Representative was appointed by the Secretary-General almost four years ago, he was requested to invite Governments, intergovernmental and non-governmental organizations inter alia to comment on whether existing international law adequately covered the internally displaced. At that time, the Representative noted the differences of opinion among legal experts as to whether existing international law was adequate or not in its coverage. He recommended that a compilation and evaluation of the existing standards be prepared to determine whether coverage was adequate or whether additional standards were necessary. This project was endorsed by the Commission on Human Rights and the General Assembly and has received wide support from the international community.

6. Over the past three years the Representative has worked closely with a team of highly respected institutions and experts and they have finalized the requested compilation and analysis of legal norms pertaining to the internally displaced. The study is before the Commission at its current session as Addendum 2 to the present report.

7. The compilation was based on two studies undertaken at the request of the Representative. One study was prepared by the Ludwig Boltzmann Institute of Human Rights (Austria) and the other was undertaken jointly by the American Society of International Law and the International Human Rights Law Group (United States of America). These studies were reviewed at a meeting of legal experts in Vienna in October 1994 and were subsequently submitted to the Commission at its session in 1995 as an addendum to the Representative's report (E/CN.4/1995/50/Add.3 and CRP.1). They were further reviewed at a meeting of experts in Geneva in May 1995, after which they were merged into one document at the request of the Representative. The merged document was reviewed and approved at a small expert meeting held in Washington, D.C., in September 1995.

8. The aim of the compilation and analysis of legal norms is to identify the existing international norms relevant to the protection of internally displaced persons, and to assess whether these norms adequately cover their needs for protection and assistance, or whether there are gaps or weaknesses in the coverage. The compilation and analysis examines the relevant provisions of international human rights law, humanitarian law, and refugee law by analogy, and their applicability to these needs, in situations of tensions, disturbances or disasters, non-international armed conflict and inter-State armed conflict.

9. The compilation and analysis substantiates the argument that while existing law covers many aspects of particular relevance to internally displaced persons, there are important areas in which the law fails to provide them with sufficient protection, as where no explicit norms exist to address identifiable needs of the displaced. For example, there are gaps in legal protection when it comes to personal documentation for the displaced or restitution of or compensation for property lost during displacement. Another area of insufficient coverage occurs when a general norm exists but no specific right has been articulated that would ensure implementation of the norm. For example, there is a general norm on freedom of movement but no explicit guarantee against the forcible return of internally displaced persons to places of danger. While it may be possible to infer specific legal rights from the norm, the protection of the internally displaced would be strengthened by spelling them out.

10. There are also instances in which the internally displaced are not protected by international law for shortcomings in the law itself. For example, in some situations of tension and disturbance that fall short of armed conflict humanitarian law is not applicable and human rights law may be restricted or derogated from, and protections thereby suspended that are critical for the well-being or survival of the displaced. International law, moreover, with few exceptions 1/ binds only States, not non-State actors, such as insurgent groups, under whose authority internally displaced persons may reside. Finally, some States have not ratified key human rights treaties and/or the Geneva Conventions and the Additional Protocols thereto, and thus are not formally bound by their provisions unless these are reflective of customary law.

11. The compilation and analysis restates existing law and clarifies its provisions. It sets forth the areas of insufficient protection and recommends the explicit enunciation of rights in these areas to protect the internally displaced better. It also identifies clear gaps in the legal protection of internally displaced persons, where new international legal norms are needed. The conclusions of the compilation and analysis are annexed to the present report.

12. The findings of the compilation and analysis do not invalidate the view that the implementation of existing standards is more urgent than legal reform. It is indeed argued by some that any attempt to develop new standards risks narrowing the scope of coverage that already exists and could deflect from efforts to strengthen and monitor implementation of existing norms. While this argument is understandable, the weaknesses and gaps mentioned above have to be addressed through legal reform so that the specific needs of the internally displaced can be addressed in a comprehensive manner. In addition, there is need to consolidate into one document existing norms which are at present too dispersed and diffuse to be effective. Restating the law and clarifying its provisions should in fact strengthen attention to the need to implement existing norms, prove valuable to the work of international organizations in the field, and also serve the educational purpose of increasing international awareness of the situation of the internally displaced.

13. It is beyond doubt that some form of a legal framework is needed and should be developed. The General Assembly at its most recent session emphasized the need for a framework. The issue of what form such an instrument might take, whether it should be a statement of principles, a code of conduct or a declaration, raises a separate set of practical questions. Here, the guidance of the Commission would be helpful.

14. Lastly, it should be noted that the compilation and analysis before the Commission focuses only on those guarantees relevant to internally displaced persons from the moment they become displaced until the moment of return or until alternative solutions are found. While the compilation mentions the legal norms relevant to a right not to be displaced, it does not discuss the specific content and the limitations of such a right in detail. It is, however, recognized that there is a need to develop these areas in order to achieve a comprehensive legal framework relating to displacement. Accordingly, a separate paper is being prepared the findings of which will be integrated into the proposed legal framework.

III. INSTITUTIONAL ARRANGEMENTS

15. One of the issues the Commission on Human Rights and the General Assembly have requested the Representative to examine is the question of the institutional arrangements for providing protection and assistance to the internally displaced. The existing situation and needed reforms are being assessed primarily through consultations and participation in inter-agency forums and through an ongoing study, undertaken by the Brookings Institution - Refugee Policy Group Project on Internal Displacement. 2/

16. Because there is no one organization, or collection of organizations, mandated to take responsibility for the internally displaced, there are institutional gaps in the international system. At the same time, there is no political will to create a new organization mandated to protect and assist these persons. Nor is it likely that an existing institution will be mandated to assume full responsibility for the internally displaced. The residual option is that of a collaborative arrangement among a wide variety of bodies and organizations whose mandates and activities are relevant to the problems of internal displacement.

17. The prerequisites for such a collaborative arrangement are (i) that these agencies focus attention on the needs of the internally displaced and tailor their strategies to meet specifically those needs and (ii) that agencies coordinate better among themselves. With regard to the first issue, it should be noted that international agencies are now giving more attention to the question of internal displacement than ever before. The Office of the United Nations High Commissioner for Refugees (UNHCR), for instance, has played a significant role in a number of in-country situations, including Bosnia and Herzegovina, Tajikistan and Chechnya in the Russian Federation. Internally displaced persons are now the largest category of beneficiaries of World Food Programme (WFP) relief aid. In 1994, WFP allocated 2.1 million tons of food to an estimated 16.5 million internally displaced persons. The United Nations Development Programme (UNDP) has recently reorganized its financial allocation procedures, allowing for greater programming flexibility that permits more involvement with situations of internal displacement.

The United Nations Children's Fund (UNICEF) and the World Health Organization (WHO) have also enlarged their involvement with internally displaced persons. The International Organization for Migration (IOM) has expanded its activities with regard to the return and reintegration of internally displaced persons. The main organs of the United Nations, such as the General Assembly, and the governing bodies of United Nations organizations, in particular the Executive Committee of the High Commissioner for Refugees' Programme, have endorsed this trend.

18. In addition, the International Committee of the Red Cross (ICRC) has focused increased attention on the subject of internal displacement. In October 1995 it organized a symposium on internally displaced persons, during which the specific situation of internally displaced persons in the context of armed conflict and the activities of the ICRC were discussed. The 26th International Conference of the Red Cross and Red Crescent, which took place in December 1995, adopted a resolution on principles and action in international humanitarian assistance and protection, the first part of which concerns internally displaced persons and refugees. In the resolution, the Conference inter alia called on States to ensure access to internally displaced persons for neutral, impartial and independent humanitarian organizations, and to renew their support for the provision of food aid and other supplies for humanitarian assistance to long-standing situations of internal displacement. It also invited the Movement and National Societies of the Red Cross and Red Crescent to enhance their capacities to provide services to the internally displaced, including protection and assistance, and to strengthen their cooperation with the United Nations.

19. Many organizations have shown remarkable flexibility in interpreting their mandates to respond to situations of internal displacement. In some cases they have used their good offices to undertake activities for the internally displaced. In others, they have extended coverage to the internally displaced when they fall within a broader category of concern, such as victims of armed conflict, or women or children in need. None the less, the massive and global problem of internal displacement is still not adequately addressed. Substantial numbers of internally displaced persons continue to receive little assistance from the international community, and often scant attention is paid to their protection concerns.

20. A central coordination mechanism to assign institutional responsibility in emergency situations is essential. In the past few years, some progress has been made in this area. There now exist coordinating mechanisms which promise to bring coherence into the international system. The focal points in these structural arrangements are the Emergency Relief Coordinator (designated as the reference point in the United Nations system for requests for assistance and protection for internally displaced persons), the Inter-Agency Standing Committee, its Working Group, and its Task Force on Internally Displaced Persons. A similar coordinating structure is reflected at the field level through the Resident Representatives of UNDP or, in cases of complex emergencies, the Resident Coordinators or Humanitarian Coordinators who head disaster management teams, composed of United Nations operational agencies and sometimes NGOs, and coordinate humanitarian assistance for internally displaced persons. In Somalia, a specific task force on internally displaced persons has been created within the inter-agency structure.

21. The Representative has supported these collaborative arrangements. Specifically, he has initiated bilateral contacts with the heads of United Nations departments and organizations, has participated in inter-agency meetings and has contributed the substantive findings of his projects and missions. He has appealed to the inter-agency structures for support for the various aspects of his work and for assistance with the follow-up function of his mandate. Through his participation and presence in the various inter-agency structures, he has provided an opportunity for closer association between human rights bodies and humanitarian agencies.

22. The Inter-Agency Task Force on Internally Displaced Persons, which was reconstituted in May 1995, is illustrative of current collaborative arrangements. The Task Force has pledged to assist the Representative by providing substantive background information for his country missions and by contributing to follow-up efforts through the provision of information, and, more importantly, through activities in implementation of his recommendations. The cooperation between the Representative, the UNDP Resident Representative in Peru and the Task Force exemplifies this arrangement: following the Representative's mission to Peru in 1995, and on the basis of discussions that took place during his visit, UNDP undertook to implement a project that would benefit the internally displaced, returnees and other poor and marginalized communities and suggested the convening of a donors' conference that would focus on these groups. The Task Force has encouraged the Resident Representative to keep it apprised of developments and inform it of ways in which it could be helpful, for instance, with fund-raising. The United Nations High Commissioner for Refugees pledged greater attention to the internally displaced in Burundi following discussions in the Inter-Agency Standing Committee on 2 June 1995 in which the representative pointed out the sharp disparity of treatment between refugees and internally displaced persons in that country.

23. The Task Force is also expected to review all serious situations of internal displacement, explore the extent to which protection, assistance and development needs are being met, and recommend the best division of labour among the agencies of the United Nations. So far it has held brief discussions on the situation of the internally displaced in Sri Lanka, Peru and Colombia, countries which the Representative has visited and reported on, as well as on the situation in Somalia. It also has discussed a number of general issues, such as the question of a database, and has analysed the institutional lessons to be learned from the massacre of internally displaced persons in Kibeho, Rwanda in April 1995.

24. The United Nations system-wide approach is still new of course, but it is already clear that strong leadership will need to be exercised by the Inter-Agency Standing Committee and its Task Force, and its ability to address situations of internal displacement effectively will have to be demonstrated. In particular, leadership will be needed in the field, where Resident Coordinators, who may not always have sufficient experience in emergency response or background in protection issues, are nevertheless called on to respond to situations of internal displacement.

25. The Inter-Agency Task Force's approach to date has been cautious. It appears to be interpreting its role as one of a forum for discussion and

exchange of information and views on internal displacement. In part, this can be explained by the divergent views and approaches of the member agencies to the subject of internal displacement, analysed in the Representative's report to the Commission at its fifty-first session (E/CN.4/1995/50). Agencies are known to resist coordination and are not always ready to assume responsibility in situations of internal displacement.

26. At the same time, it is important that the Task Force be encouraged to focus the attention of the United Nations on serious situations of internal displacement and on the locations where special programmes are required to enhance protection and assistance. Special meetings should be held on specific situations in order to promote greater inter-agency attention. Additional thought should also be given to ways in which the Inter-Agency Standing Committee and its Working Group might look into situations of internal displacement more systematically. Country-specific task forces at headquarters and in-country mechanisms in the field should further be urged to devote specific and comprehensive attention to the issue of internal displacement, as has occurred in Somalia. Guidelines to this effect could be drafted by the Task Force on Internally Displaced Persons. Overall, the work of United Nations departments and organizations in the field should be given a sharper focus in terms of responding to the needs of the internally displaced.

27. Parallel to his participation in inter-agency structures, the Representative has been in contact with the UNDP Resident Representatives in countries where there are significant numbers of internally displaced persons and many of them have provided the Representative with information on displacement. A similar effort has been undertaken with regard to WFP offices in various countries. The information provides important background material on the basis of which a first assessment can be made of the situation of the internally displaced and on the priorities to be set in planning for future missions and engaging in dialogue with Governments. Secondly, when it relates to countries the Representative has already visited, it may provide an indication of the extent to which the Representative's recommendations have been implemented.

28. Other encouraging signs of increased cooperation between humanitarian and development agencies and the Representative have been invitations for him to participate in international conferences and other events that relate to internal displacement. Indeed, the increasing number of conferences directly dealing with internally displaced persons is in itself a sign of more serious and sustained interest in addressing the problem. The Regional Conference to Address the Problems of Refugees, Displaced Persons and Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States, the Addis Ababa Regional Conference on the Legal Status of Refugee and Internally Displaced Women in Africa, the Tripoli regional seminar on internally displaced persons in Arab countries, the ICRC Symposium on Internally Displaced Persons, all of which took place in the past 12 months, are important examples. In these events the Representative has been called upon to make substantive contributions, in particular with regard to the development of a legal framework for the internally displaced.

29. The Representative welcomed the emphasis that the World Summit for Social Development and the Fourth World Conference on Women placed on the issue of internally displaced persons. Both international conferences made wide-ranging recommendations, the implementation of which could have a significant impact on the internally displaced. It is expected that the Representative will participate in the United Nations Conference on Human Settlements (HABITAT II), given both the significance of forced evictions as a cause of internal displacement and the importance of housing rights for internally displaced persons.

30. Greater efforts are also being made to increase contacts with regional organizations and it is hoped that in the context of the CIS Conference (see para. 28 above), as well as through various initiatives of the High Commissioner for Human Rights in the field, such contacts will be strengthened. The increased involvement of regional organizations is an encouraging development. The Organization for Security and Cooperation in Europe (OSCE), for instance, has become gradually more involved with the plight of the internally displaced in Tajikistan, Bosnia and Herzegovina and in the Caucasus region. The Inter-American Commission on Human Rights of the Organization of American States (OAS) has begun more systematic monitoring and reporting on situations of internal displacement and has called upon OAS to establish structures to promote greater attention to situations of internal displacement. The Representative plans to meet with OAS Inter-American Commission on Human Rights this year, with the aim of increasing cooperation in the area of internal displacement. The Organization of African Unity (OAU) has also begun to devote more attention to the problem (see E/CN.4/1995/50, paras. 220-222).

31. United Nations human rights bodies have increased their focus on internal displacement, in particular treaty bodies, thematic and country special rapporteurs and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, as described in the report of the Secretary-General on human rights and mass exoduses (E/CN.4/1996/42). The substantive information provided and the relevant recommendations can provide direction to Governments and intergovernmental and non-governmental organizations in their work to improve the conditions of the internally displaced. Towards this end, the Representative has maintained contacts with the treaty bodies and with the High Commissioner for Human Rights. In his latest report to the General Assembly (A/50/36), the High Commissioner underlined the need for greater human rights protection for the internally displaced and listed steps being considered to accomplish this (see para. 73 below). The capacities of human rights bodies need to be strengthened to enable them to assume a larger protection role in inter-agency structures.

32. As emphasized in the Representative's previous reports to the Commission and the General Assembly, particular attention must be paid to the important role played by NGOs in assisting and protecting the internally displaced. Frequently, NGOs are in more direct contact with displaced populations and have closer relationships with the local authorities than international agencies, which tend to work with the central Government. NGOs, furthermore, are able to define and implement strategies which provide crucial assistance to the internally displaced and tend to be more flexible in implementing

integrated policies that address both protection and assistance. Currently, the Norwegian Refugee Council is undertaking a detailed assessment and review of the strategies and activities of NGOs working with internally displaced persons.

33. In the wider framework of inter-agency collaboration, the role of the Representative remains essentially catalytic, involving awareness-raising and advocacy. This has been pursued not only through participation in inter-agency structures and through consultations with intergovernmental and non-governmental organizations but also, in particular, through country visits and dialogue with Governments.

IV. COUNTRY VISITS, MONITORING AND FOLLOW-UP

34. Country visits and dialogue with Governments are the cornerstone of the mandate. The Representative's dialogue with Governments is based on the premise that internal displacement falls within domestic jurisdiction and therefore the sovereignty of the State concerned. Sovereignty, however, carries with it the responsibility of States to provide for the security and well-being of those residing on their territories. The Government of a State that acts in good faith will attempt to protect and provide life-sustaining protection and assistance to its internally displaced citizens, and if the magnitude of the problem exceeds its capabilities, it will call on the international community to perform these humanitarian functions. If, however, a Government is unable or unwilling to provide these services and does not request, or rejects an offer of, humanitarian relief from competent external organizations, questions arise about the rights of the internally displaced and the obligations of their Governments towards them. Under such circumstances, the international community may have the responsibility to hold States accountable and may even be called upon to provide the needed assistance and protection to the internally displaced and perhaps other segments of the population.

35. Country visits create new awareness of the problems faced by the internally displaced among the key actors inside the country, including government officials, those who work with the displaced and the public at large. The programme of the visits illustrates the potential for such awareness-raising. They normally begin with a briefing by the United Nations representative, followed by meetings at the highest level of the government hierarchy, including the Head of State and/or Government, pertinent ministers and government officials with responsibilities for the internally displaced, and with representatives of United Nations specialized agencies and the donor community, national human rights bodies and human rights, relief and development NGOs, community leaders, representatives of the displaced population and displaced persons. These meetings are followed by on-site visits to displaced populations and dialogue with provincial and local authorities, including military commanders, civilian administrators, relief workers, local leaders and the displaced themselves. The third phase is one of briefing the local, provincial and national authorities as well as international agencies about the on-site visits, his findings and his recommendations for remedial measures.

36. Often, all these activities are accompanied by intensive media coverage, the effect of which is to bring the problem to the fore, open it up for discussion, and make it a subject for urgent action by policy and decision makers. Often government and non-governmental agencies are compelled to rethink their policies, strategies and priorities. The country visits may motivate the convening of a seminar in which the Government and NGOs participate together (sometimes for the first time), and may trigger greater international support or donor assistance. The visits provide opportunities for increased dialogue between those concerned and they can generate the momentum necessary for the introduction of reforms.

37. The missions of the Representative to Colombia in 1994 and to Peru in 1995 illustrate the value of such visits. Information received from the Government of Colombia over the past year indicates a continued willingness to address the problem of internal displacement, although additional steps are needed. Following the Representative's visit to Colombia, a number of projects aimed at addressing the relief needs of the marginalized sectors of the population generally and the internally displaced in particular were established and certain legal reforms were adopted. The Government has requested the International Organization for Migration to collaborate in the execution of a number of projects. With regard to human rights protection, it has planned a network for the sharing of human rights information and has established a commission for the implementation of recommendations made by United Nations human rights bodies.

38. In Peru, the Government pledged that it would pay greater attention to the needs of the internally displaced and that it would review its institutional responses. It agreed to cooperate closely with UNDP and other international bodies and to implement social projects aimed at facilitating the return and the permanent settlement of the internally displaced.

39. Country visits, however, are bound to have a very limited impact unless there is appropriate follow-up. Missions offer opportunities to discuss specific issues with Governments and international organizations and to reach agreements which can lead to improvements in the situation. These agreements are regularly communicated to the inter-agency structures, including the Inter-Agency Task Force on Internally Displaced Persons. Nevertheless, constant monitoring is needed of the conditions of the internally displaced and the extent to which the recommendations made by the Representative are being carried out. This has not always proved possible.

40. The situation in Sri Lanka offers an example. Following the breakdown of the peace talks between the Government and the armed opposition, a major offensive was launched by the Sri Lankan military on the Jaffna peninsula, the traditional stronghold of the armed opposition (the Liberation Tigers of Tamil Eelam (LTTE)). ICRC and the Resident Representative of UNDP, among others, reported on the thousands of internally displaced persons who fled to the east of the peninsula. While a thorough account was given of the food, water, shelter and health needs of the displaced, little information was provided on the needs of these populations for protection from violence. The plight of the internally displaced was briefly discussed at the Inter-Agency Working Group and the Task Force, but no recommendations emerged. It would be useful if the specific issues the Representative discussed with the Government

during his mission to Sri Lanka in 1994 (see E/CN.4/1994/44/Add.1) were closely monitored by the United Nations offices in the country. For instance, the issue of the voluntary return of the internally displaced to their home areas and questions relating to the physical and mental integrity of the displaced and their personal liberty remain as pertinent today as they were two years ago.

41. Four main types of follow-up information can be identified: data provided by United Nations agencies in the field; information provided by other human rights bodies and mechanisms of the United Nations; information provided by the Government; and information provided by NGOs. Such information ideally should be made available to the Representative and through him to the Commission and General Assembly (see A/50/558, para. 27). In addition, the Representative should also be able to obtain information through undertaking follow-up missions.

42. In order for country visits and dialogue to achieve the most effective results, they need adequate preparation. Background study of the country, the conditions of the internally displaced, the activities in the country of international and local organizations is essential for making effective use of the limited time available during the visit itself. The participants in the Task-Force on Internally Displaced Persons have undertaken to assist the Representative with such preparation. Similarly, the Administrator of UNDP and the Executive Director of WFP have sent directives to their field staff to provide the Representative with relevant information and to assist him during his missions.

43. Country visits are not the only form in which dialogue should take place between the Representative and Governments. The problem of internal displacement affects far more countries than the Representative could visit. Internal displacement is a global phenomenon warranting a more extensive system of on-site monitoring and much more frequent contact with Governments and other pertinent actors. The Representative is grateful for the information provided on internal displacement by special rapporteurs of the Commission and the human rights treaty bodies, for example on Afghanistan, Bosnia and Herzegovina, Burundi, Cambodia, Cyprus, the Dominican Republic, the Federal Republic of Yugoslavia (Serbia and Montenegro), Guatemala, Iraq, Liberia, Mexico, Myanmar, the Philippines, the Republic of Chechnya in the Russian Federation, Rwanda, Sierra Leone, Sudan, Turkey and Zaire. He is also grateful for information submitted, largely by NGOs, but also by Governments and by UNDP resident representatives, on internal displacement in Angola, Bangladesh, Eritrea, Ethiopia, Georgia, Haiti, Honduras, India, Indonesia, Kenya, Lebanon, Moldova, Mozambique, Tajikistan, South Africa and Somalia. It is the intention of the Representative to initiate dialogue with as many of these countries as possible and also to pay on-site visits in order to gain a better understanding of the situation with regard to internal displacement. He has already discussed the possibility of visits to Kenya, Tajikistan and Turkey with the Governments of those countries, although no invitations have been received to date.

44. In the interim, the Representative has been working with United Nations agencies and NGOs to compile information on country situations so as to assess accurately the protection, assistance and development needs of internally

displaced populations in all affected countries. Having such information available would enhance the function of the mandate, permit the prioritization of situations of concern to the international community and make possible more comprehensive and continuous dialogue with Governments, in particular when concrete situations of internal displacement are brought to the attention of the Representative and measures are needed to remedy the situation.

V. INTERNALLY DISPLACED WOMEN

45. The General Assembly and the Commission on Human Rights have emphasized the need to pay closer attention to the specific situation of internally displaced women. During his missions, the Representative found that women constitute the largest group among any displaced population and are particularly vulnerable to human rights abuses.

46. Internally displaced women are particularly vulnerable to gender-specific violence as the protection afforded to them by their homes and communities disappears and the stress of displacement becomes manifest in the family unit. Such abuses include physical and sexual attacks, rape, domestic violence and sexual harassment, increased spousal battering and marital rape. Incidents of sexual abuse of children, especially girls, reportedly occur at higher rates among those children separated from their families. The varying forms of gender-specific violence against displaced persons violate a broad range of norms enshrined in international and regional human rights instruments and impair or nullify enjoyment of the rights to liberty, security and integrity of person, and freedom from gender discrimination. Special Rapporteurs of the Commission have categorized rape as a form of torture and in certain instances it is considered to constitute a war crime and a crime against humanity. The compilation and analysis of legal norms (E/CN.4/1996/52/Add.2) specifically calls for special measures to ensure the protection of the specific needs of internally displaced women.

47. Some internally displaced women may be subjected to the practices of sale into marriage and forced marriage. These practices are prohibited under provisions of international human rights law recognizing the right to freedom from slavery and slavery-like practices. Displaced persons, in particular women, are frequently coerced into providing sexual favours in return for essential food, shelter, security, documentation or other forms of assistance. Exploitation of prostitution is also common, especially in situations where resort to prostitution presents one of the only forms of economic subsistence. Along with the resulting physical and psychological trauma, victims have become infected with sexually transmitted diseases, including HIV/AIDS. Such practices also infringe many of the human rights and humanitarian law standards regarding physical attack, as well as freedom of association and personal liberty.

48. Gender based discrimination and unequal treatment in allowing access to food, water, clothing, housing, adequate medical care and sanitation often undermines the satisfaction of these subsistence needs. This is particularly serious in camp situations where these needs are acute. Such behaviour is prohibited under international human rights and humanitarian law. Refugee guidelines, which emphasize the needs of women for preventive, gynaecological

and reproductive health care and the needs of victims of gender-specific violence for medical and psycho-social care should be applied in cases of internal displacement.

49. Internally displaced women may have great need for personal identity papers and for the proper registration of events such as marriages or births. At the same time, it may be more difficult for them to obtain such documentation. Of particular relevance to internally displaced women are provisions that mandate registration of marriages in an official registry in order to ensure that both spouses freely consent to marry. In requiring that refugee women be given equal access with men to registration documents and/or individual identity papers in their own names, UNHCR has sought to eliminate inequities that lead to, among other things, extortion and gender-based violence, and to provide a means for them to prove their legal status.

50. In many countries, women may face gender-based discrimination in owning, acquiring, managing and disposing of property. In such cases, internally displaced women may be in a vulnerable situation if, for instance, they lose their husbands, as they may be unable to inherit or own land and other immovable property. This may later have an impact on the process of return. Freedom from discrimination in the enjoyment of property ownership is mentioned specifically in the Convention on the Elimination of All Forms of Discrimination against Women, which reiterates the equal rights of husband and wife to own, acquire, manage, administer, enjoy and dispose of property.

51. The protection of the human rights of women becomes even more vital when they lose their family and support structures because of displacement. Therefore, during any stage of internal displacement it is important for internally displaced families to remain together. The same is true for those communities which are culturally considered to comprise the extended family. If these persons are dispersed and separated from one another, they must be able to reunite as quickly as possible. A wide range of international human rights instruments declare that the family is the fundamental unit of society requiring special protection. The particular vulnerability of women as a consequence of break-up of the family in times of displacement has been recognized by the Special Rapporteur on violence against women, its causes and consequences in the context of refugee situations, and it is arguable that this applies equally to internally displaced women.

52. The opportunity for employment or other economic activities, which are essential elements contributing to a person's sense of dignity and independence, constitutes a principal need of internally displaced persons. Internally displaced women may be in greater need of economic opportunities than they were prior to displacement. The Convention on the Elimination of Discrimination against Women addresses women's employment opportunities and other economic activities. Article 11 guarantees women equal rights with men in the field of employment, including the same employment opportunities, equal remuneration, and equal treatment in respect of work of equal value. With regard to refugee women, the Executive Committee of the UNHCR Programme has also recognized the particular need to "provide all refugee women and girls with effective and equitable access to basic services, including ... education and skills training, and make wage-earning opportunities available to

them". 3/ The compilation and analysis of legal norms suggests that the special need of internally displaced women to have equal opportunities for employment or other economic activities should be addressed.

53. A wide range of international instruments recognize the right to education on a non-discriminatory basis. Education is of particular importance to the displaced, who are often estranged from society and suffer from violations of their dignity. Displaced women and girls may face gender-based discrimination in gaining access to education or training, such as survival skills training, life and job skills training leadership training and training in conflict resolution.

54. Lastly, the lack of participation of women in planning and programming life in camps or other settlements, as well as their lack of participation in government and public affairs, has been frequently observed. Support networks, as well as consultation and participation in the planning and programming of various aspects of camp life are of particular relevance to women, who are generally present in disproportionately large numbers in groups of internally displaced persons. Such networks may enable them better to confront obstacles to participation in camp decision-making, something normally entrusted to men, no matter how few. In addition, participation in government and public affairs can enable internally displaced women to influence their own situation of displacement.

55. International human rights and humanitarian bodies have done little to document the particular abuses to which internally displaced women have been subjected. Even less has been done to develop strategies to remedy their plight. In his 1995 report to the Commission on Human Rights (E/CN.4/1995/50), the Representative made several recommendations on how the situation of internally displaced women could be improved. In particular, he noted that agencies working with the internally displaced should consider, inter alia: monitoring the situation of women in accordance with the UNHCR Guidelines for the Protection of Refugee Women; documenting violations and interceding with the relevant authorities on behalf of the women concerned; offering counselling services, such as have been made available in the former Yugoslavia, where women have suffered sexual violence; and ensuring the equitable distribution of food and supplies and the better representation of displaced women in camp administration and decision-making. Other measures that could be envisaged would include gender-sensitive training of human rights officers, including in understanding traditional practices that affect internally displaced women, and closer cooperation with women's groups in the field. 4/ In addition, the need of women heads of household to become economically self-supporting in order to provide for their families should be the subject of special training and income-generating programmes and strategies. International financial institutions should support micro-enterprises for internally displaced women. 5/

56. A great deal more attention, however, is needed to developing strategies for addressing the protection and development needs of women in situations of internal displacement. While it is important that programmes of UNICEF, UNIFEM and NGOs seek to reduce the special vulnerability of women, additional strategies are needed. The aforementioned Addis Ababa conference on refugee

and displaced women (see para. 28) recommended the enunciation of standards specific to the particular needs of displaced women, including the ownership of land and inheritance rights. The Programme of Action adopted by the World Summit for Social Development (Copenhagen, 1995) included among its recommended responses to the needs of displaced persons a call to ensure that displaced women are involved in the planning and implementation of assistance activities. The Fourth World Conference on Women, held at Beijing in September 1995, also made specific recommendations with regard to increasing protection and assistance for internally displaced women.

VI. INTERNALLY DISPLACED CHILDREN

57. During a number of his missions (such as to Sri Lanka, Colombia, Burundi, Rwanda and Peru) the Representative has observed that children, together with women, account for most of the displaced persons in displaced or returnee communities. Many children have lost either one or both parents. In Peru, for instance, 50 per cent of the 850 persons in one returnee community were children, and 70 of them were orphans.

58. Children are especially vulnerable to discrimination and need special protection in situations of displacement. Such discrimination may be based either on their ethnic, social or economic background, or on their status as displaced or on their gender and may affect their access to school and other services.

59. In situations of internal displacement risks to physical safety increase as many displaced persons are trapped in conditions of armed conflict. Children who have lost one or both parents become even more vulnerable in hostile environments. During flight and while relocated in camps, girls in particular may suffer violence or ill-treatment and terrorization. Domestic violence and child abuse also increase in situations of displacement. With nobody to take care of them, these displaced children are often subjected to violence and ill-treatment that put their life at greater risk. Tracing projects and programmes for foster families need to be more closely studied in order to develop additional remedies for children.

60. Internally displaced children are frequently subjected to forcible conscription, despite prohibitions against such practices under international law. For instance, as reported in Liberia, Mozambique and the Sudan, displaced children are often prey to forcible recruitment into militia which compel them to commit atrocities against civilians. The problems such individuals face are immense, especially if they have lived apart from their families and have been combatants most of their lives. They may exhibit unusual levels of violence and alcoholism years after they have returned to a "normal" civilian life.

61. Lack of water and sanitation, together with malnutrition can have severe and even fatal consequences on displaced children and infants. Efforts should be made to guarantee that they have a nutritionally balanced diet and access to clean water. Serious consequences of internal displacement for children are exhaustion, illness and psychological problems. Flight often puts them beyond the reach of the few government or NGO programmes that exist, such as

vaccination campaigns or feeding programmes. Moreover, many displaced children have witnessed the murder of their parents, or the destruction of their homes, and suffer from depression, nightmares and fear. Loss of memory, linked to traumatic experiences, isolation, loss of cultural reference points and the psychological fragility of many families give rise to a variety of problems, including a high school drop-out rate.

62. Internally displaced children are often deprived of education, either because educational facilities do not exist or are insufficient in the area to which they have temporarily relocated or because alternative learning settings are lacking. Also, parents of displaced children may be unable to pay required school fees, or it may simply be too dangerous for the children to travel to school. In addition, many displaced children have had to help support their families rather than attend school. In other cases, schools have been destroyed or closed, or children may not possess the personal documentation, such as birth certificates, that is necessary to register with schools. In the case of internally displaced children who speak a minority or non-official language, relocation to new areas may cause significant difficulties in understanding teachers, whose language they are not familiar with.

63. In his 1995 report to the Commission on Human Rights, the Representative made several recommendations for enhancing the situation of internally displaced children, in particular that agencies working with the internally displaced should consider, inter alia: monitoring the situation of children in accordance with the UNHCR Guidelines for the Protection of Refugee Children; documenting violations and interceding with the relevant authorities on behalf of the children concerned; and ensuring the equitable distribution of food, supplies and the provision of education and counselling services to children.

64. The regional consultations in connection with the study on the impact of armed conflicts on children, being carried out under the leadership of Ms. Graça Machel, have made several important recommendations specific to the protection of children in situations of armed conflict. The consultation held in Addis Ababa in 1995, for example, recommended the promotion of the physical and psychological recovery and social reintegration of children, the application of international humanitarian and human rights standards, and the protection of children in situations of armed conflict. Taken together, these initiatives should prove important in developing programmes for the enhancement of the protection of internally displaced children.

VII. THE QUEST FOR A COMPREHENSIVE STRATEGY

65. The strategy that is required for the internally displaced calls for measures that should extend beyond the provision of emergency protection and assistance to address the causes. Addressing the causes in turn requires going beyond the mere fact of the existence of conflicts, communal violence or human rights violations to understand the deeper causes. These are often rooted in the traumas of nation building: crises of identity, historical denial of democratic liberties and fundamental human rights, and the

deprivations of poverty and severe underdevelopment. The consequences are the humanitarian tragedies that result from violent conflicts, gross violations of human rights and the sudden massive displacements they generate. Remedies should envisage both a response to the emergency needs of the situation and a search for lasting solutions. The themes of the strategy are therefore prevention, protection and assistance, and a secure process of return or permanent settlement in another area, rehabilitation, reintegration and sustainable development. These themes constitute the basis of the Representative's work and the issues discussed with governments and international organizations.

A. Prevention

66. If the increasing problem of internal displacement is to be contained and reduced, preventive strategies are essential. United Nations human rights bodies have an important role to play in this regard. Preventive measures currently relied upon include dialogue with governments, urgent appeals, public statements, emergency meetings, the deployment of human rights field staff, machinery for the protection of minorities and the provision of technical assistance. Commission reports addressing the root causes of mass exoduses also exemplify efforts at prevention. Human rights treaty bodies, moreover, have been requested to examine measures they might take to prevent human rights violations and several have adopted emergency procedures and undertaken missions to countries for preventive purposes. The establishment of the post of United Nations High Commissioner for Human Rights has added momentum to the development of preventive strategies. Human rights field staff deployed under his auspices could play a valuable preventive role. Human rights advisory services and education projects are valuable tools for the promotion of human rights.

67. All these measures, however, are at an early stage of development and human rights bodies should be encouraged to increase their capacities for prevention. Mechanisms for the protection of minorities in particular need to be strengthened as many displaced persons are members of minority groups who have been subjected to forcible expulsion, resettlement and other persecution because of their ethnic or other background. Recent promising initiatives include the adoption by the United Nations of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the establishment of a working group by the Sub-Commission to develop strategies for minority protection and to prevent conflict.

68. At the national level, promotion and protection of human rights through the implementation of international standards, and the establishment of national institutions to monitor and promote them, is the safest guarantee against involuntary displacement.

69. The reports of the Representative on his country missions have emphasized the importance of supporting preventive techniques aimed at empowering the population at the grass-roots level. Very often, local communities have built up effective strategies for mitigating the impact of displacement. The coping strategies that displaced populations themselves have developed should be carefully examined by NGOs and international agencies since such mechanisms can be essential elements of prevention and protection.

70. Irrespective of the level at which preventive strategies are pursued, efforts must be made to ensure that they do not interfere with freedom of movement. There is a need to reconcile strategies that encourage people to remain within their own countries with those that safeguard the right to leave and seek asylum from persecution. Under no circumstances should the desire to forestall large-scale population displacements take precedence over assuring the security of displaced populations.

B. Protection and assistance

71. The provision of protection and assistance to displaced populations is first and foremost the responsibility of States. During his missions the Representative has discussed these issues in great detail with governments and has made a number of recommendations, focusing in particular on the strengthening of national institutions for the protection of human rights and of government agencies that provide relief assistance.

72. Strategies for providing international protection to the internally displaced include greater coordination among the political, peacekeeping, humanitarian and human rights bodies of the United Nations in order to promote mutually reinforcing solutions to crises of internal displacement and thereby contribute to the cause of peace and security. While a comprehensive approach is endorsed by the Task Force on Internally Displaced Persons, the task of integrating human rights issues into the humanitarian agenda generally, and the question of integrating the internally displaced into the work of the humanitarian and development agencies more specifically, remains a challenge.

73. For the moment, human rights and protection questions do not adequately figure either in the agenda or the content of the deliberations of the inter-agency structures, even though the High Commissioner for Human Rights and the Representative now participate therein and raise such issues. UNHCR and ICRC, both of which have a protection mandate, are not present in all situations of internal displacement, making it essential that protection concerns be addressed by inter-agency structures.

74. The High Commissioner for Human Rights has declared his readiness to contribute to efforts to protect the internally displaced in the field. As noted above, in his report to the General Assembly (A/50/36), the High Commissioner affirmed that, in cooperation with the relevant United Nations programmes and agencies, in particular UNHCR, and regional organizations, as well as with the Representative, he is considering steps to be taken in order to create the framework for continued protection of the human rights of displaced persons and refugees. Attention is being paid in particular to: (a) ensuring an international human rights presence in countries with large internally displaced/refugee populations, especially in locations where there are concerns for the protection of displaced persons, for example, in camps and at returnee sites; (b) dispatching human rights field officers to collect information, ascertain protection needs, monitor the situation, provide the Representative of the Secretary-General with information and disseminate knowledge of human rights; (c) elaborating guidelines on how to monitor and report on the human rights situation of displaced persons and to include

displacement-related human rights law in manuals to be prepared for field staff; (d) supporting the Representative in his efforts, especially with regard to his missions and the follow-up of his recommendations; (e) facilitating inter-agency coordination both at Headquarters and in the field; (f) increasing human rights training activities for staff of humanitarian and peace-keeping operations; (g) implementing human rights training activities, specifically with regard to displaced persons, for community leaders and members of the armed forces and police; and (h) providing support to the participation of non-governmental organizations with expertise in human rights assistance to displaced persons.

75. Despite the High Commissioner's willingness to undertake these steps, and the apparent deferral by many humanitarian agencies to his office and the Centre for Human Rights, the fact remains that the current lack of capacity means that human rights bodies and mechanisms are not yet fully operational and are unable to carry out major portions of the programme. Humanitarian organizations must therefore seek to address the protection lacunae, where they exist. Although relief and development agencies may not have the mandate and expertise to address human rights concerns, they may facilitate protection through consultations with governments, negotiations for access, and arrangements with appropriate agencies and NGOs.

76. Collaboration between human rights and humanitarian bodies should seek to ensure that a comprehensive approach is taken towards protection and assistance. Cooperation in the field, through joint projects or seminars, could greatly improve the willingness and capacity of humanitarian and peace-keeping operations to become more involved in activities to promote protection for the internally displaced. Needs assessment missions dispatched to countries should include persons with expertise in human rights protection. When increased attention to human rights is needed in a given situation, the Resident Coordinator should recommend a visit by the Representative. When human rights bodies cannot be present or have been denied entry to particular countries, relief and development agencies should be expected to ensure that protection concerns are known and addressed. They should take advantage of the credibility they have gained to increase the physical protection of the internally displaced. They should also be made more aware of the relevant conclusions and recommendations of the human rights mechanisms. In order for this to be achieved, changes in the "culture" and the policy of many humanitarian and development agencies of the United Nations must take place, and human rights bodies will need to strengthen their capacities and expertise in promoting protection in on-the-ground situations.

C. Solutions

77. The Representative has stressed during all his missions the importance of addressing the causes of the conflicts and of bridging the cleavages, and all his interlocutors, whether government or non-governmental, have acknowledged that only progress towards this goal will bring about lasting solutions for the displaced. Information received concerning the countries visited, however, indicates that the road to lasting peace and security is, in all cases, long and difficult and that a firmer commitment to peace is called for

by all those involved in these situations. In Sri Lanka, for instance, the general political situation, as well as the more specific situation of the displaced, had shown signs of significant improvements in 1995, as indicated in the report of the Representative (E/CN.4/1995/50). The breakdown of the peace process, the resurgence of violent clashes between the Government and the Liberation Tigers of Tamil Eelam (LTTE), and the recent military offensive on the Jaffna peninsula, the traditional stronghold of LTTE, have caused significant displacement in recent months. In Colombia, Burundi and the Sudan the security situation has also deteriorated since the Representative's visits, and large numbers of persons remain displaced.

78. Humanitarian assistance and the promotion of human rights are not substitutes for broader political efforts to advance the cause of peace, security and stability in a country. Political solutions must still be found. Apparent progress in the negotiations regarding the former Yugoslavia show that no situation is so intractable as to defy solution. When the humanitarian, human rights, political and security dimensions of emergency situations are dealt with simultaneously, a climate of confidence is created which in turn affects positively the situation for the internally displaced.

79. Where political solutions are being achieved, massive rehabilitation programmes are required. Such programmes may greatly exceed the resources of the State concerned. It should not be forgotten that sometimes these States are emerging from situations of war and destruction. Unfortunately, in the case of the internally displaced and other uprooted populations, development aid is often seen as a less compelling concern than humanitarian relief. Development agencies, unlike their humanitarian counterparts, do not have extensive funds which can be used for the rehabilitation and development of areas where internally displaced persons are to return or settle permanently. While relief agencies have contingency funds which they can use in emergencies, development agencies typically do not have access to resources that can be used to increase the coping capacity of affected areas so that they can more effectively absorb uprooted populations.

80. One way to resolve this problem would be for development agencies to have a "rehabilitation" fund to be used at the discretion of the head of the agency in the same way as relief agencies have emergency funds. The fund could be used to benefit the entire population of designated areas, whether they are displaced persons, indigenous people, returnees or refugees. In addition, the Inter-Agency Task Force on Internally Displaced Persons should focus its attention on devising ways to promote durable solutions for internally displaced persons and on fostering the coordination needed to accomplish this.

VIII. CONCLUSIONS

81. Three areas of activity for the mandate have crystallized over the past several years. These are the development of appropriate legal standards for meeting the needs of the internally displaced, promoting the most effective international institutions to meet the challenges of protecting and assisting the internally displaced, and undertaking visits to countries with serious displacement problems to examine them on the ground. Together, these areas constitute the pillars of the mandate in terms of both the ongoing study of the problem and practical application of the results.

82. With respect to legal standards, following the compilation and analysis of norms, and the identification of ambiguities and gaps in the law and the need to remedy them, the international community is now faced with the challenge of developing an appropriate legal framework that would provide an explicit, adequate and firm basis for protection of and provision of assistance to the internally displaced. The framework should include the norms applicable before situations of internal displacement occur, those that apply in situations of internal displacement and those that apply to resolving situations of internal displacement. The development of a legal framework is imperative although views may still differ as to the form such an instrument might take.

83. Similarly, analysis and evaluation of existing institutional arrangements reveal an obvious gap in the international system which, despite the progress made, still calls for remedy. Clearly, no institution exists with an exclusive or full mandate for the internally displaced. It is also clear that there is no political will to create a new institution or to mandate an existing one to assume full responsibility for them. The collaborative approach has become the only option available; but it is often constrained by problems of coordination, diffusion of activities, insufficient attention to protection and lack of direction. Considering the intensity and scope of the crisis of internal displacement, improvements are needed to provide a more coherent focus, especially in the area of protection, while utilizing the diversity of existing institutional resources in the international system. It is expected that the analysis of institutional arrangements currently being carried out by the Brookings - Refugee Policy Group Project on Internal Displacement will propose some practical steps in this regard.

84. Perhaps the most concrete activity that offers potential for the effective utilization of the mandate as a catalyst is the programme of country visits and dialogue with governments and other pertinent actors in which the Representative has engaged since his appointment. As has been repeatedly explained, these visits not only help raise the level of awareness of the problem inside the country, but also provide opportunities for a constructive exchange of views, balancing respect for national sovereignty with the responsibilities that go with it, especially in terms of ensuring the security and welfare of the citizens, among whom the internally displaced are a particularly vulnerable group. Furthermore, country visits also offer a fact-finding opportunity that is instructive on the particular problems of the situation and the generic problems of internal displacement worldwide. However, in order for the mandate to carry out the programme of country visits properly and effectively, to monitor displacement problems globally, to conduct in-depth studies of its varied manifestations, to undertake timely intercessions in areas needing urgent attention, and generally to play the advocacy and intermediary role required of it, its capacity in terms of human and material resources needs to be enhanced considerably. The mandate will also need resources for follow-up visits and for the development, irrespective of visits, of a frequent and dynamic dialogue between governments and the Representative, in particular when concrete situations of internal displacement are brought to the attention of the Representative and it becomes

obvious that certain measures must be taken to remedy these situations. For a continuous dialogue, the conduct of research, processing of information, and follow-up will be required. Given the scarcity of resources within the United Nations, the mandate needs to tap potential resources outside the system, including from individual governments, private foundations, research institutions and non-governmental organizations. The backing of the Commission in this respect would be a useful catalyst to encourage those who are likely to contribute to enhancing the mandate's capacity.

85. In the course of his country visits, the Representative has found that the special protection, assistance and development needs of internally displaced women and children, who represent the vast majority of the internally displaced, are far from being adequately addressed. The compilation and analysis of legal norms recommends more explicitly articulated legal protection for internally displaced women and internally displaced children. Greater on-the-ground protection is also needed and better implementation of existing law. Specifically, monitoring should be increased and documented reports prepared of the status of internally displaced women and children so that intercessions can be made and other pertinent strategies developed. The particular difficulties faced by women heads of household and their need to become economically self-supporting should receive attention and should become a primary concern of international development agencies and financial institutions.

86. While the areas described above constitute the normative institutional and operational framework for this mandate, there is still a need for developing a strategy that would utilize them in practical terms to address effectively and comprehensively the crisis of internal displacement both generically and contextually. Such a strategy should approach the displacement problem in its three manifest phases: causes, consequences and remedies. The corresponding responses would be to develop measures for pre-empting and preventing displacement, to provide adequate means of protection and relief assistance during displacement, and to seek durable solutions through voluntary and safe return, resettlement, rehabilitation, reconstruction, and self-reliant development. Formulating such a comprehensive strategy is one of the main objectives of the study undertaken by the Brookings - Refugee Policy Group project in which a number of research institutions, numerous scholars and experts are involved.

87. As a final comment, it should be reiterated that the international community has made considerable progress in responding to the mounting crisis of internal displacement. However, much more needs to be done. Building on the activities of the mandate over the past several years, this work now needs to be focused on developing an appropriate legal framework, sharpening the institutional options available in the international system and enhancing the capacity of the mandate to play its catalytic role more effectively. Rather than be overwhelmed by despair at the magnitude of the task, the mandate must operate on the principle of doing what is possible, despite all the constraints.

Notes

1/ The exceptions are: non-international armed conflicts covered by common article 3 to the Geneva Conventions of 1949 and/or Protocol II Additional to the Geneva Conventions.

2/ See, for example, "Improving institutional arrangements for the internally displaced", Brookings Institution - Refugee Policy Group Project on Internal Displacement, October 1995.

3/ Executive Committee of the UNHCR Programme, Conclusion No. 64 (XLI) on refugee women and international protection.

4/ See also E/CN.4/1996/105.

5/ See "Refugee and internally displaced women", the Brookings Institution - Refugee Policy Group Project on Internal Displacement, November 1995.

Annex

CONCLUSIONS OF THE COMPILATION AND ANALYSIS OF LEGAL NORMS
(E/CN.4/1996/52/Add.2)

"V. CONCLUSIONS

410. This report sets out to compile the law protecting the needs of internally displaced persons and to identify existing gaps in their legal protection. In his comprehensive study, a/ the Representative on internally displaced persons queried whether existing international legal instruments provide sufficient legal protection for the internally displaced and whether what is needed is more legal prescription or simply better implementation of existing law. Based on the foregoing analysis, this study concludes that while existing law covers many aspects of particular relevance to internally displaced persons, there remain areas in which the law fails to provide sufficient protection for them.

411. Two principal categories of insufficient protection for internally displaced persons can be distinguished as follows: one area of insufficient coverage results from gaps in legal protection which occur where no explicit norms exist to address identifiable needs of the displaced. In some cases, there may be a norm in human rights law but not in humanitarian law and vice versa. b/ In such cases, it is only possible to articulate rights by analogizing from existing provisions of law that apply only in limited situations or only to certain categories of persons such as children, refugees or minorities. The second area of insufficient coverage results where a general norm exists but a corollary, more specific right has not been articulated that would ensure implementation of the general norm in areas of particular need to internally displaced persons. c/ In such cases, it is possible to infer specific legal rights from existing general norms; however, the protection of internally displaced persons would be strengthened by spelling out these specific guarantees in an international instrument.

412. As human rights law is usually binding on State actors only, internally displaced persons lack sufficient protection in situations of tensions and disturbances if violations are perpetrated by non-State actors; the same is true during non-international armed conflicts regarding acts by dissident forces not covered by Protocol II. Another case of insufficient protection occurs in situations that both fall below the threshold of application of humanitarian law and allow for restrictions or even derogations of human rights guarantees: in some situations of tensions and disturbances, or disasters resulting in the displacement of persons, restrictions may limit certain human rights that are critical for the well-being or even survival of the displaced. In the rare instance where a genuine emergency exists that does not reach the level of an armed conflict, internally displaced persons may be left without legal protection because a State may derogate from certain human rights obligations that are key to life-essential protection. In situations of non-international armed conflict, common article 3 or

Protocol II sometimes does not afford protection and, at the same time, human rights guarantees are limited or derogated from. Again, internally displaced persons face a situation of insufficient protection reflecting the fact that the scope of non-derogable rights in human rights instruments is inadequate to address all the critical needs of the displaced. Finally, there is a vacuum in legal protection with regard to internally displaced persons in States that have not ratified key human rights treaties and/or the Geneva Conventions of 1949 and their Additional Protocols.

413. Where the analysis shows that the needs of internally displaced persons are insufficiently protected by existing international law, it is important to restate general principles of protection in more specific detail and to address clear protection gaps in a future international instrument on the protection of internally displaced persons. The precise form such an instrument could take should be decided in the light of the findings of the compilation and analysis and in the light of the need for reform. For the time being, it is sufficient to summarize the findings of this study as follows.

414. It can be concluded that in many aspects relating to the right to life, the prohibition of torture, the prohibition of hostage-taking, the prohibition of contemporary forms of slavery, subsistence rights and many aspects of religious rights, present international law seems to protect sufficiently most of the specific needs of internally displaced persons. If these rights are violated frequently, the reason does not lie in inadequate legal protection but rather in the unwillingness of States and/or, in non-international conflicts, of dissident forces, to observe binding obligations.

415. Areas of insufficient protection where a general norm exists but a corollary, more specific right relevant for the protection of particular needs of internally displaced persons has not been articulated are numerous:

(a) Regarding discrimination, a statement would be useful that the notion of 'other status' prohibiting discrimination includes the status of internally displaced persons;

(b) Regarding the protection of life, in inter-State armed conflicts, it should be clarified that, as provided by Protocol I and by non-derogable human rights law, internally displaced persons are always protected against acts of violence committed by their own Government. Furthermore, it should be highlighted that attacks on camps or settlements of internally displaced persons or the creation of free-fire zones in such areas are strictly prohibited;

(c) Regarding gender-specific violence, the law, in principle, provides for adequate protection. However, specific measures should be taken to ensure the protection of the specific needs of internally displaced women;

(d) Regarding detention, there is a need to clarify and to restrict the preconditions for lawful detention of internally displaced persons in closed camps;

(e) Regarding shielding, it would be appropriate to specify that internally displaced persons may never be used as human 'shields' in armed conflicts of any kind by any of the parties to the conflict;

(f) Regarding forcible recruitment, existing guidelines on the forcible recruitment of refugee children could inspire principles concerning forcible recruitment of internally displaced children. As internally displaced adults are especially vulnerable to discriminatory conscription practices, their special needs should also be addressed by a future instrument;

(g) Regarding subsistence needs, many aspects of the rights to food, water, clothing and housing in situations of non-international armed conflict remain unclear;

(h) Regarding medical care, the special needs of internally displaced women in the areas of reproductive and psychological health care, as well as of disabled persons in camps for the displaced should be addressed in a future international instrument;

(i) Regarding free movement, internally displaced persons need specific guarantees concerning the right to go to a safe place inside their country or seek asylum abroad in all situations or to return voluntarily and in safety to their place of residence. They also need a specific guarantee against forced return to places dangerous to their health and/or safety;

(j) Regarding family related needs, the question of family reunification in situations of non-international armed conflict needs to be clarified;

(k) Regarding the use of one's own language, the specific language-related needs of internally displaced persons who are in areas where another language is dominant should be addressed in a future international instrument;

(l) Regarding religion, it would be useful to address the specific religious needs of internally displaced persons in a future international instrument;

(m) Regarding work, the special needs of internally displaced women and of internally displaced persons in general to seek equal opportunity for employment and other economic activities should be addressed;

(n) Regarding education, the bearing of this guarantee on internally displaced persons in any situation of displacement needs to be clarified;

(o) Regarding association, there is a need to clarify the extent to which the right to association of internally displaced persons is protected in situations of armed conflict;

(p) Regarding political participation, it is necessary to stress that internally displaced persons do not lose their right to political participation because they had to leave their homes, and the means for their participation, including access to voter registration procedures, must be safeguarded;

(q) Regarding the need for access to international assistance, whereas existing international law recognizes the right of internally displaced persons to request and receive protection and assistance from their Government and, to a certain extent, the right of international actors to offer humanitarian services on their behalf to affected Governments and authorities, a corresponding duty of States to accept offers of assistance by humanitarian organizations and to grant and facilitate free passage of relief has not been explicitly recognized.

416. Finally, there are some clear gaps in the legal protection of the needs of internally displaced persons:

(a) Regarding disappearances, it should be clarified that disappearances of internally displaced persons in any situation, including armed conflict, are prohibited and that this prohibition applies to all parties to the conflict;

(b) Regarding the missing and dead, an obligation to search for missing internally displaced persons, to gather information concerning their fate and to search for and bury respectfully those who have been killed is lacking in present international law;

(c) Regarding the use of land-mines and like devices, there is a need to establish a clear prohibition on deploying and using such weapons against internally displaced persons by any party to an armed conflict of any kind;

(d) Regarding detention, safeguards against arbitrary detention of internally displaced persons are lacking in situations of non-international armed conflict;

(e) Regarding needs for personal identification, documentation and registration, a future instrument should articulate specific duties of States or non-governmental actors to meet such needs in the context of displacement;

(f) Regarding property-related needs, the right to restitution of property lost as a consequence of displacement or to compensation for its loss is not fully recognized; there is a clear gap in situations of armed conflict, whether internal or international;

(g) Regarding relief workers and organizations, humanitarian law does not offer adequate protection to the transports and relief supplies of relief workers. This gap should be addressed by a future international instrument."

Notes

a/ E/CN.4/1993/35.

b/ For example, the prohibition of disappearances.

c/ One example is the lack of a statement that "other status" prohibiting discrimination includes the status of being displaced.